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Federal Communications Commission
Office of Secretary

November 21, 2003

DAVID A. O'CONNOR
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VIA HAND DELIVERY

Marlene H. Dortch, Esq., Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554
Attention: Audio Division, Media Bureau

Re: Amendment of Section 73.202(b), Table of Allotments,
FM Broadcast Stations, Channel 280C, Toquerville, Utah
Petition for Rulemaking

Dear Ms. Dortch:

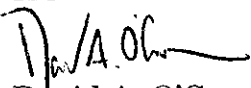
Transmitted herewith, on behalf of Calvary Chapel of St. George, are an original and four (4) copies of its Petition for Rulemaking to amend the FM Table of Allotments in order to designate Channel 280C allotted to Toquerville, Utah as a reserved channel for noncommercial educational FM service.

An extra copy of the filing is enclosed. Please date-stamp the extra copy and return it to the courier.

Should you have any questions, please contact the undersigned.

Respectfully submitted,

HOLLAND & KNIGHT LLP


David A. O'Connor

Counsel for Calvary Chapel of St. George

Enclosure

cc: Rolanda F. Smith, Audio Division

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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NOV 21 2003

Federal Communications Commission
Office of Secretary

In the Matter of)
Amendment of Section 73.202(b)) RM _____
Table of Allotments,)
FM Broadcast Stations.) MB Docket No. _____
(Channel 280C, Toquerville, Utah))

To: Chief, Audio Division, Media Bureau

PETITION FOR RULEMAKING

Calvary Chapel of St. George ("CCSG"), by its attorneys and pursuant to sections 1.401 and 73.202(a) of the Commission's rules, 47 C.F.R. §§ 1.401, 73.202(a), hereby respectfully petitions the Commission for modification of the Commission's Table of Allotments for FM Broadcast Stations, 47 C.F.R. § 73.202(b).¹ Specifically, CCSG requests that non-reserved FM channel 280C allotted to Toquerville, Utah be reserved only for noncommercial educational ("NCE") broadcasting, and that the Commission modify the FM Table of Allotments as follows:

¹ In a Public Notice released on September 30, 2003, the Commission announced that it would accept "reservation showings" until November 21, 2003 for various vacant FM allotments. *See Media Bureau Opens Window to Permit Noncommercial Educational Reservation Showings for Certain Vacant Allotments*, Public Notice, DA 03-2990 (rel. Sept. 30, 2003). In Attachment A to the Public Notice, Channel 280C, allotted to Toquerville, Utah is listed as a vacant FM channel for which the Commission would accept a reservation showing. *See id.* at A-10 (No. 424). The reservation showing contained herein is made for Channel 280C allotted to Toquerville, Utah, and is timely filed under Commission rules.

Existing Section 73.202(b)

...

Utah

...

Toquerville.....280C

...

Proposed New Section 73.202(b)

...

Utah

...

Toquerville.....*280C

...

A Technical Statement, attached as Exhibit 1 hereto, demonstrates that CCSG's proposal fully complies with the Commission's technical rules. Specifically, the Technical Statement demonstrates that CCSG's proposal is consistent with paragraphs 34-40 of the Commission's *NCE Second Report and Order* and satisfies the two criteria set forth therein.²

NEW FIRST OR SECOND SERVICE

The proponent of an NCE reservation showing must demonstrate that maximum class facilities at the proposed allotment site would provide a first or second NCE service to at least ten percent of the population within the proposed station's service area, and that such population is at least 2000 persons.³ The Technical Statement demonstrates that more than 135,000 persons would receive a

² *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, MM Docket No. 95-31, *Second Report and Order*, FCC 03-44, 18 FCC Rcd 6691 (rel. Apr. 10, 2003) ("*Second Report and Order*").

³ *Id.* para. 34.

new first or second NCE FM service under CCSG's proposal. That represents *more than 92 percent* of the total population within the proposed station's service area.⁴

The percentage of persons that would receive a new first or second NCE FM service under CCSG's proposal is considerably more than the minimum of 10% of the total population which the Commission requires.⁵ Furthermore, the number of persons that would be served by the proposed station is well over the required minimum of 2000 persons.⁶ Accordingly, the NCE service standards set forth in the *Second Report and Order* are satisfied.

TECHNICAL PRECLUSION

The Commission also requires a reasonable demonstration that NCE service is technically impermissible from a currently reserved NCE channel.⁷ The Technical Statement demonstrates, "to a reasonable degree of certitude,"⁸ the technical preclusion of a compliant, NCE reserved band Class C FM facility, at minimum height above average terrain ("HAAT") and with minimum effective radiated power ("ERP"), in the proposed station's service area. Using the "reliable and efficient proxy of technical preclusion" endorsed by the Commission in the *Second Report and Order*,⁹ the Technical Statement establishes the presumption

⁴ As set forth in the Technical Statement, the total population in the proposed station's service area is 147,050. *See* Exhibit 1 at 2.

⁵ *See Second Report and Order*, para. 34.

⁶ *See id.*

⁷ *Id.* para. 35.

⁸ *Id.* para. 33.

⁹ *See id.* para. 35.

that such an NCE reserved band facility for Toquerville, Utah would be technically precluded.

PUBLIC INTEREST SHOWING

A grant of this Petition would serve the public interest because CCSG's proposal would substantially further the fair, efficient and equitable distribution of service by helping to bring a new NCE FM station to the Toquerville, Utah community. Such a fair, efficient and equitable distribution of service is specifically mandated by Section 307(b) of the Communications Act of 1934, as amended.¹⁰

DECLARATION

Also attached is a Declaration from Rick Nerud, President of CCSG, affirming that CCSG will apply for the Channel 280C Toquerville allotment if changed as proposed.

¹⁰ 47 U.S.C. § 307(b).

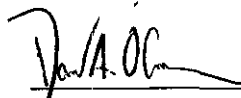
CONCLUSION

CCSG has satisfied all criteria necessary to a reservation showing.

Therefore, the Commission should grant this Petition and issue an appropriate Notice of Proposed Rule Making to reserve Channel 280C allotted to Toquerville for noncommercial educational broadcasting.

Respectfully submitted,

CALVARY CHAPEL OF ST. GEORGE



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Its Attorney

November 21, 2003

DECLARATION

I, Rick Nerud, declare as follows:

- 1. I am President of Calvary Chapel of St. George ("Calvary St. George"), the petitioner in this proceeding.**
- 2. Calvary St. George intends to apply for a construction permit for Channel 280C upon adoption of the proposed rule making, as proposed herein, amending Section 73.202, Table of Allotments, FM Broadcast Stations (Toquerville, Utah).**
- 3. If awarded the construction permit for Channel 280C, Calvary St. George will construct and operate such facilities pursuant to its terms and conditions.**

I hereby declare, under penalty of perjury, that the statements made in this declaration are true and accurate to the best of my knowledge, information and belief.



Rick Nerud

November 20, 2003